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August 12, 1993

FHWA Docket No. MC 92-4  
Room 4232  
HCC-10  
Office of the Chief Counsel  
Federal Highway Administration  
400 Seventh Street, S.W.  
Washington, D.C. 20590

FHWA-97-2180- 13

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Re: Notice of Proposed Rulemaking ("NPRM")  
Department of Transportation/ Federal Highway Administration  
Federal Motor Carrier Safety Regulations; Transportation of  
Hazardous Materials (FHWA Docket No. MC-92-4)

Dear Sir or Madam:

Distrigas of Massachusetts Corporation ("**DOMAC**") submits the following comment to the referenced NPRM, which proposes to add a new Subpart B (Motor Carrier Safety Permits) to the Federal Motor Carrier Safety Regulations, 49 C.F.R. Part 397. For your information, DOMAC purchases liquefied natural gas ("LNG") which is imported by an affiliated company, terminals the LNG at its Everett, Massachusetts facility, and markets the LNG in the northeastern United States.

The NPRM purports to implement part of Section 8 of the Hazardous Materials Transportation Uniform Safety Act of 1990 ("HMTUSA"), 49 U.S.C. App. § 1805(d). Section 8 authorizes the Secretary of Transportation to establish by regulation the hazardous materials to which the new motor carrier safety permit requirements will apply, but goes on to state that the requirements "shall apply, at a minimum," to transportation by motor carrier of the following four categories of materials:

a class A or B explosive, a liquefied natural gas, a hazardous material which has been designated by the Secretary as extremely toxic by inhalation, or a highway route controlled quantity of radioactive materials as defined by the Secretary.

49 U.S.C. App. § 1805(d)(5) (emphasis added).

FHWA DOCKET MC-92-4-12  
PAGE - OF 3



FHWA Docket No. MC 92-4

August 12, 1993

Page Two

Congress nowhere defines what it means by "a liquefied natural gas," and the phrase admittedly is somewhat ambiguous. By deliberately choosing to use the words "a liquefied natural gas," however, Congress must have intended to refer, at a minimum, to the broader class of all liquid fuels that are derived from natural gas (e.g., ethane, propane, or ethylene) or even to all liquefied flammable gases. This conclusion is supported by the fact that each of the other three categories of materials specified in Section 8 of the HMTUSA clearly includes many different products. If Congress had intended to single out LNG in Section 8 of the HMTUSA, it would have referred to it as liquid methane, as do other DOT regulations. See, e.g., 49 C.F.R. § 172.101.

The NPRM sets forth a proposed definitional section (49 C.F.R. § 397.39) that would apply the new safety permit requirements to "liquefied natural gas." 58 Fed. Reg. 33424 (June 17, 1993). In using this specific definitional language, the DOT presumably did not intend to read the statutory language ("a liquefied natural gas") as including only LNG and no other natural gas liquids or liquefied flammable gases such as ethylene, propane, propylene, or butane. To single out LNG for special treatment in this manner would be to ignore not only the broader congressional mandate but also LNG's favorable transportation safety record ~~vis a vis~~ <sup>vis</sup> that of other liquefied flammable gases. ~~e t y~~ <sup>e t y</sup> record is confirmed by the recent decisions of the cities of Houston and Seattle to convert major portions of their bus fleets to LNG.) We assume that the DOT did not intend this result.

Accordingly, DOMAC seeks clarification that the proposed regulations are intended to cover, at a minimum, all liquefied flammable gases, including but not limited to LNG. In light of LNG's superior transportation safety record, DOMAC believes that a strong case can be made for applying the new safety permit requirements to all flammable gases, which are, after all, included in the same RSPA hazard classification as LNG (Division 2.1). The alternative regulatory language which DOMAC proposes is set forth in Attachment A hereto.

Respectfully submitted,

Joseph A. Teves  
President

## ATTACHMENT A

### **§ 397.39 Definitions.**

For the purposes of this subpart--

*Designated high risk hazardous materials* means highway route controlled quantity radioactive materials (new RSPA hazard classification, Class 7; see 49 CFR 173.2, as amended), flammable gases in bulk (new RSPA hazard classification, Division 2.1; see 49 CFR 173.2, as amended), more than one liter (1.06 quarts) per package of a hazardous material extremely toxic by inhalation (new RSPA hazard classification, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A; see 49 CFR 173.2, as amended), and the following quantities of class A and/or B explosives, including packaging (new RSPA hazard classification, Division 1.1, 1.2, and 1.3; see 49 CFR 173.2, as amended):

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